RECENT IMPORTANT DECISIONS

ADMINISTRATORS—DEDUCTION OF DEBTS—STATUTE OF LIMITATIONS.—The administrators of an estate obtained from the probate court a citation requiring one of the heirs at law to appear and show cause why certain sums due from him to the estate should not be retained from his distributive share. In response to the citation the heir appeared and alleged that, if anything had been due from him to the estate, it was barred by the statute of limitations. *Held*, that the equitable right to retain the debt of a distributee from his distributive share is not affected by lapse of time, and the deduction of the debt should be made, although an action to recover the same would be barred by the statute of limitations. *Holden* v. *Spier* (1902), — Kan. —, 70 Pac. Rep. 348.

The question above decided,—is the statute of limitations applicable where the indebtedness of an heir to an estate is sought to be retained from his distributive share, has been answered by the courts in decisions which are irreconcilable. The ruling in this case, that the statute cannot be interposed, is well established in the English courts of chancery, and is supported by the following decisions:—*Holmes* v. *McPheeters*, 149 Ind. 587; *Succession of Skipwith*, 15 La. Ann. 209; *Ford* v. *Talmage*, 36 Mo. App. 65; *In re Smith's Estate*, 14 Misc. Rep. 169, 35 N. Y. Supp. 701; *Sartor* v. *Beaty*, 25 S. C. 293; *Tinkham* v. *Smith*, 56 Vt. 187. The principle underlying this line of decisions seems to be that the right to appropriate the share of the distributee does not depend upon the common law doctrine of set-off, but upon the exercise of chancery powers,—that there is an equitable lien on the share of the distributee until the obligation which he owes the estate is discharged. On the contrary, the position that the bar of the statute may be successfully pleaded against the administrator, is sustained by *Richardson* v. *Keel*, 9 Lea.(Tenn.), 74; *Holt* v. *Libby*, 80 Me. 329; *In re Light's Estate*, 136 Pa. St. 211, 27 Wkly. Notes Cas. 21; *Allen* v. *Edwards*, 136 Mass. 138; *Harrod* v. *Carder's Adm'r.*, 3 Ohio Cir. Ct. R. 479.

AGENCY—AUTHORITY TO INDORSE NEGOTIABLE PAPER.—The plaintiff corporation manufactured paper. The superintendent of its mills was one Jackson, who on former occasions had collected money from customers and countersigned checks, also acting as manager of the mills. He received a check from a customer in payment of an account due the company and endorsed it in the name of the "Jackson Paper Manufacturing Co., C. A. Jackson, sup't.," and delivered it to a second customer, who relying on having seen Jackson in the capacity of manager endorsing checks, paid him the money, which Jackson appropriated to his own use. The check was then deposited by the holder in his bank and was paid by the defendant drawee. In an action by the Jackson Paper Mnfg. Co., payee, against the drawee, *Held*, that the plaintiff should recover. *Jackson Paper Mnfg. Co.* v. *Commercial Nat'l. Bank* (1902), — Ill., —, 65 N. E. Rep. 136.

The decision was based on the ground that the plaintiff had not recognized such authority to make or endorse negotiable paper in any former instance, because it had not known of its exercise, and that it was not necessarily implied from the duties imposed on an agent of this character. The power to make and endorse negotiable paper will be held to have been conferred only in those cases where it is clearly given, or where it is a manifestly necessary and customary incident of the authority granted. MECHEM ON AGENCY, § 390; *New York Iron Mine* v. *Negaunee Bank*, 39 Mich. 644. The court

also held that the burden of proving such authority is on the party alleging its existence—relying especially on *Hardesty* v. *Newby*, 28 Mo. 567, 75 Am. Dec. 137; *Hays* v. *Lynn*, 7 Watts, 525; *Commercial Nat'l. Bank* v. *Lincoln Fuel Co.*, 67 Ill. App. 166.

AGENCY—NOTICE—ADVERSE INTEREST.—Plaintiff corporation employed a bookkeeper, C, who had charge of its pass-book containing the account of the corporation with the defendant bank. C forged several checks in the name of the plaintiff, and obtained the money thereon. The plaintiff failed to examine the pass-book or discover the forgeries, and C extracted and detroyed the checks as they were returned, thus preventing discovery of the crime. The plaintiff brings action for the amount of the forged checks erroneously charged against it. *Held*, that the plaintiff can recover. *Kenneth Inv. Co.* v. *National Bank of the Republic* (1902), — Mo. —, 70 S. W. Rep. 173.

Among several other points, the court considered the question, (p. 178), whether the knowledge of the wrong, obtained by the plaintiff's agent in the course of his employment, *i. e.*, when the pass-book was returned to him, should be imputed to the principal. It was decided that, since the agent's interests were in conflict with those of his principal, knowledge obtained under these circumstances should not be imputed to the latter. The following authorities are cited: *Inerarity* v. *Bank*, 139 Mass, 332, 1 N. E. 282, 52 Am. Rep. 710; MECHEM, AGENCY, Sec. 723 and cases in note; *Weisser's Adm'rs.* v. *Denison*, 10 N. Y. 68, 61 Am. Dec. 731; *Welsh* v. *Bank*, 73 N. Y. 424, 29 Am. Rep. 175; *Gunster* v. *Power Co.*, 181 Pa. St. 327, 37 Atl. Rep. 550, 59 Am. St. Rep. 650; *Hardy* v. *Bank*, 51 Md. 562, 34 Am. Rep. 325; *Henry* v. *Allen*, 151 N. Y. 1, 45 N. E. 355, 36 L. R. A. 658; (in the L. R. A. numerous authorities are named in briefs.) See also, *Smith* v. *Boyd*, 162 Mo. 146, 62 S. W. 439; *Critten* v. *Chemical Nat'l. Bank*, 70 N. Y. 246, 60 App. Div. 241. A few of the earlier cases do not recognize this exception to the rule that notice to the agent is notice to the principal. *Bank of New Milford* v. *Town of New Milford*, 36 Conn. 93; *Willard* v. *Buckingham*, 36 Conn. 395; *Bank of the U. S.* v. *Davis*, 2 Hill, 451; *Bank* v. *Dunbar*, 118 Ill., 625; *Farmers Bank* v. *Kimball Milling Co.*, 1 S. Dak. 388, 36 Am. St. Rep. 739. In *Gunster* v. *Power Co.* (supra), it was held that where the wrong-doer was agent for both parties, the person for whom he was acting in the capacity of agent, when he committed the fraud, should suffer the loss.

CARRIERS—UNITED STATES MAIL—LIABILITY OF RAILROAD COMPANY FOR NEGLIGENT LOSS OF REGISTERED LETTER.—Through the negligence of defendant's servants, a registered letter, containing a large sum of money, was destroyed while being transmitted in the U. S. mail over defendants' road. The letter had been insured by the plaintiff company, and the company having paid the loss, brings this action against the railroad company to recover the amount so paid. On demurrer, *Held*, that plaintiff canno recover. *Boston Ins. Co.* v. *Chicago, R. I. & P. R. Co.* (1902), — Iowa, —, 92 N. W. Rep. 88.

The court held that there was no privity of contract between the plaintiff and the railway, and that defendant was neither a common nor a private carrier of mail, but a public officer or agent, so far as it dealt with the mails, and as such not liable for the negligence of its servants. The court cites, as much in point, *German State Bank* v. *Minn. St. P. & S. Ste. M. Ry. Co.*, 113 Fed. 414, recently affirmed by the circuit court of appeals (1902), 117 Fed. 434. It is believed that there are marked points of difference between the facts of the two cases. That a public office ever results from contract has been denied.